IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 3244 /2004

PETITIONER : Smt. Anuradha Dubey, W/o Prasen @ Laxmikant Dubey, aged 26 years, Occupation-Nil, R/o Village-Kukdur, Post Office-Kukdur, Tahsil-Pandariya, District Kawardha (C.G.)

P.R. No. 3357/04
Presented by Shri D.K. Singh
dated 14/12/04

-VERSUS-

RESPONDENTS : Prasen @ Laxmikant Dubey, S/o Shri Khamhan Dubey, aged 39 years, R/o Kapil Nagar, Sarkanda, Bilaspur (C.G.)

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 3244/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

19-1-2005

On a mention being made, the matter is taken up for hearing.

Shri Rajeev Shrivastava with Shri Indrasen Sahu, counsel for the petitioner.

Shri Anup Majumdar, counsel for the respondent.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India being aggrieved by the order dated 27-8-2004 passed by the 3rd Additional District Judge, Bilaspur in petition No.50-A/2004 whereby the learned Additional District Judge has rejected the prayer of the petitioner herein for giving further opportunity for filing written statement on the ground that since summons were served upon the petitioner herein on 7-5-2004 and 90 days' time has expired on 7-8-2004, therefore, further time cannot be granted to the respondent to file written statement.

Brief facts leading to filing of this writ petition are that the respondent herein filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955 against the petitioner herein. The summons for appearance and filing reply was issued to the petitioner herein and same was served upon the petitioner and she appeared before the Court first time on 7-5-2004. The petitioner herein appeared before the trial Court, the matter was fixed on 25-6-2004 and on that day an application under Section 24 of the Hindu Marriage Act was filed on behalf of the petitioner herein and next date was fixed for filing the reply of the

GR.PRJ—FS/350—12/2000—50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

application. On 27-7-2004 another adjournment was sought for filing the reply and on that, next date i.e. 24-8-2004 was fixed for filing the reply. On 24-8-2004, the matter was also fixed for reconciliation as provided under Section 23 (2) of the Act and on the said date reconciliation proceedings were also taken up, but settlement could not be arrived, therefore, the matter was fixed for 27-8-2004 for arguments on the application under Section 24 of the Hindu Marriage Act. On 27-8-2004, arguments were heard and the application was decided. Simultaneously, the time for filing written statement of the petition was also asked for which was declined by the trial Court.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued that since beginning the matter was fixed for reply and arguments on the application under Section 24 of the Hindu Marriage Act and the matter was not fixed for filing written statement, therefore, the petitioner was under the impression that the matter is fixed for arguments on the application under Section 24 of the Hindu Marriage Act, therefore, written statement could not be filed. The application was decided on 27-8-2004 and on that day, time was sought and the same was refused, therefore, in the circumstances, the impugned order is contrary to the provisions of the Act. Learned counsel while relying upon the decision of the Madhya Pradesh High Court in the matter of **Mithumal and others v. Kavita and others** reported in **2003 (3) M.P.L.J. 560** argued that in exceptional cases time can be extended.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, learned counsel for respondent submitted that in no circumstances time beyond 90 days can be extended. Even the Court is not entitled to extend the time, therefore, the impugned order is in consonance with the provisions of Order 8 Rule 1 of the C.P.C. Learned counsel for respondent relied upon a decision of the Allahabad High Court in the matter of **Dr. Nanda Agrawal v. Matri Mandir, Varanasi and another** reported in **AIR 2005 ALLAHABAD 12** and also relied upon a decision of Karnataka High Court in the matter of **Smt. Savitha Gupta v. Smt. Nagaratha and others** reported in **AIR 2003 KARNATAKA 426.**

Having heard learned counsel for the parties, I have perused the records and relevant judgments. In this connection, sub-rule (1) of Order 8 of the C.P.C. envisages that 'the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence; provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.' Therefore, plain reading of this provision makes it clear that as per the main rule 1 the defendant is under bounden duty to file written statement within 30 days from the date of service of summons on him and within the period of 30 days he can file written statement within his own right. However, proviso to above rule further lays down that if the defendant fails to file the written

GRPRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

statement within 30 days, then he can be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, therefore, after 30 days, the defendant is under obligation to request the Court for extension of time explaining the reasons for not filing the written statement within 30 days and then and then the Court can allow further 60 days' time to file written statement and that too after recording the reasons in writing showing satisfaction for delay. Therefore, even further 60 days from 30 days can be extended only on satisfactory reasons to be given by the Court. As per the decision of Karnataka High Court in the matter of **Smt. Savitha Gupta** (Supra) that the Court is not entitled to extend the time beyond 90 days in any case for allowing the defendant to file written statement. In this decision the Karnataka High Court went to the extent that even under the provisions of Order 8 Rule 9 of the C.P.C. further time cannot be granted. Even provision of Section 151 of the C.P.C. for extending the time beyond 90 days is not applicable on the ground that when there is express provision of the statute for the purpose of filing written statement. 'Inherent jurisdiction of the Court can be exercised subject to rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked', as has been held by the Hon'ble Apex Court in the matter of **Nainsingh v. Koonwarjee** reported in **AIR 1970 SC 997**. Similar view has been taken by the Allahabad High Court in the matter of **Dr. Nanda**

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Agrawal (Supra) that time cannot be extended beyond 90 days and even provisions of Section 148 of the C.P.C. cannot be availed for extending the time. Similarly powers under Order 8 Rule 9 and Section 151 of the C.P.C. cannot be exercised for extending the time beyond 90 days to file written statement, therefore, I am of the opinion that the Court cannot extend the time to file written statement beyond 90 days.

As far as the decision of the High Court of M.P. in the matter of **Mithumal and others** (Supra) is concerned, in that case application for extension of time along with written statement was filed and the Court held that 'in order to do complete justice between the parties without allowing the case to be delayed and in exceptional cases reasons to be recorded, the statement can be taken on record subject to payment of cost.' In this case, so far no written statement has been filed nor any request in writing by filing an application for extension of time has been filed. Admittedly, the petitioner herein put her appearance before the trial Court on 7-5-2004 and thereafter 90 days' time expired but written statement has not been filed. Therefore, no exceptional circumstance has been shown in this case, as such the case law is of no help to the petitioner.

Now, coming to the argument advanced by learned counsel for the petitioner that since first date the matter was fixed for arguments on the application under Section 24 of the Hindu Marriage Act and also for reconciliation, therefore, the petitioner remained under the impression

GLPRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —(—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that the matter is fixed for arguments and the decision of the application under Section 24 of the Hindu Marriage Act and the written statement is to be filed later on, but I do not find any substance in this argument and this argument is totally contrary to the provisions of Order 8 Rule 1 of the C.P.C. because Order 8 Rule 1 of the C.P.C. specifically lays down that from the date of service of summons the defendant is under obligation to file written statement within 30 days and the Court is entitled to give further 60 days for reasons to be recorded. Therefore, the petitioner is not entitled to take the above defence that the matter was fixed for arguments on the application, therefore, she could not file written statement.

Now, coming to other argument advanced by learned counsel for the petitioner that provisions of C.P.C. are not strictly applicable in the proceeding under Hindu Marriage Act, in this connection Section 21 of the Act envisages that 'subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.'

Learned counsel for the petitioner further submitted that the word '**as far as may be**' denotes that the provisions of C.P.C. are not strictly applicable in the cases filed under the Hindu Marriage Act, 1955.

This argument of learned counsel for the petitioner is also without any force for the reason that the wording of Section 21 that all

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

proceedings of the Act shall be regulated, as far as may be, by the Code of Civil Procedure makes it clear that the word '**as far as may be**' has been used with the purpose that proceedings under the Hindu Marriage Act, 1955 are to be regulated as per the Code of Civil Procedure unless and until provided otherwise.

Therefore, for the reasons mentioned above, in the present case the petitioner has not filed any written statement within 90 days and even the permission was also not sought to file written statement, I am of the opinion that the trial Court has not committed any illegality and irregularity in passing the impugned order. This petition is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-
L.C. Bhadoo
Judge

Barve